

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of) DISMISSAL AND
) CASE CLOSURE CELA
MUR 6805) UNDER THE
Patricia L. Morgan a.k.a. Patricia L. Mulligan) ENFORCEMENT PRIORITY
) SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances, or in certain cases where the responses sufficiently rebut the allegations set forth in the complaint, a no reason to believe finding.¹

For the reasons set forth below, the Office of General Counsel recommends that the Commission find no reason to believe that contributions reported under the name Patricia Morgan ("Morgan") violated 52 U.S.C. § 30122 and 11 C.F.R § 110.4, and to use its prosecutorial discretion and dismiss the allegations that contributions reported under the name Patricia Mulligan violated 52 U.S.C. § 30122 and 11 C.F.R § 110.4.

¹ The EPS rating information is as follows:
Filed: April 21, 2014.

¹ Complaint Filed: April 7, 2014. Response

27 Complainant Anthony Sinapi ("Sinapi") alleges that Patricia Morgan violated the Act by
28 making contributions to federal candidates and committees using both a false name and the name
29 of another. Compl. at 1. According to the Complaint and exhibits,² from 2007-2012 Morgan,
30 whose name prior to her marriage to Robert Morgan³ was Patricia Mulligan, made eight
31 contributions totaling \$4,700 using her current name (Patricia Morgan) and six contributions
32 totaling \$2,500 using her prior name (Patricia Mulligan).⁴ Compl. at 1-2. These contributions
33 allegedly violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4.

34 In her Response, Morgan acknowledges that until "recently" her checks carried her prior
35 name rather than her current name. Resp. at 1. She states that her use of electronic bill paying
36 left her with a number of old checks, and that her bank, Citizens Bank, still uses her prior name
37 on her electronic account despite her efforts to correct the information. *Id.* Morgan states that
38 she assumed that those treasurers who filed reports using her prior name were under the
39 impression it was necessary to use the name given on the check rather than the individual's legal
40 name, if different.⁵ See Resp. at 1.

² The attached exhibits appear to be pages from FEC disclosure reports reflecting the contributions made by Morgan, along with documents related to Morgan's divorce.

³ The couple divorced in March, 2000, but Morgan retained her married name. See Exhibit E.

⁴ In the Amended May Monthly Report of Disbursements and Receipts, the John McCain 2008, Inc. committee listed two identical contributions, both on April 8, 2008, one under the name of Patricia Morgan and the other under the name of Patricia Mulligan. See Amended May Monthly Report at 5224, 5293 (filed on July 11, 2013). It is unclear whether the campaign received one check bearing the erroneous Mulligan designation from Citizens Bank or whether two separate checks were submitted for identical amounts, but bearing different names. It should be noted that even combined, the two entries only total \$500 and do not violate individual contributions limits even when paired with Morgan's other contributions.

⁵ Attached to the Response are scans of bank printouts, which bear her prior name, and two sets of checks: a series of physical checks with her current name, and electronic checks with her prior name. See *id.* at 2-3.

41 Under the Act, it is unlawful for any individual to make contributions in the name of
42 another person or to knowingly permit such a use of the individual's own name in order to
43 violate this provision.⁶ See 52 U.S.C. § 30122; see also 11 C.F.R. § 110.4(b)(1)(i-iii).

44 It appears that the contributions being reported under different names were the combined
45 result of a mistake by both Morgan's bank and her continued use of older physical checks, which
46 "until recently" bore her prior name. Resp. at 1. Due to the nature of the exhibits in both the
47 complaint and response, it is not entirely clear which contributions were made with physical
48 checks and which, if any, were supplied electronically by her bank. According to the disclosure
49 reports attached to the Complaint, Morgan did not appear to exceed the contribution limits⁷ to
50 any one candidate or committee (either separately or combined under both names).⁸ Since
51 "Patricia L. Morgan" was the respondent's legal name at the time the contributions at issue were
52 made, we recommend that the Commission find no reason to believe that the contributions
53 reported under the name Patricia Morgan violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4.

54 We note that the most recent federal contribution alleged to have been made using the
55 name "Patricia Mulligan" was reported by the Republican National Committee as received on
56 July 7, 2010.⁹ This contribution falls outside the statute of limitations, as do all other
57 contributions reported under the name "Patricia Mulligan." See *FEC v. Williams*, 104 F.3d 237

⁶ A fictitious or "false name contribution is a *direct* contribution from *A* to a campaign, where *A* represents that the contribution is from another person who may be real or fictional." See *United States v. O'Donnell*, 608 F.3d 546, 549 (9th Cir. 2010) (emphasis in original); see also 11 C.F.R. § 110.4(b)(1)(i), (b)(2)(ii).

⁷ The yearly contribution limits for individuals to candidates and national party committees were as follows: 2007-08 (\$2,300/\$28,500); 2009-10 (\$2,400/\$30,400); 2011-12 (\$2,500/\$30,800).

⁸ The total amounts by year contributed to federal candidates or committees (under both names combined) are as follows: \$750 in 2007; \$2,450 in 2008; \$500 in 2009; \$1,250 in 2010; \$0 in 2011; \$2,250 in 2012. See Exhibits A and B.

⁹ See Republican National Committee 2010 Amended August Monthly Report of Receipts and Disbursements at 2061 (filed on June 10, 2011).

58 (9th Cir. 1996), *cert. denied*, 522 U.S. 1015 (1997) (the general federal five-year statute of
59 limitations, 28 U.S.C. § 2462, applies to FEC civil enforcement actions that seek the imposition
60 of civil penalties). Therefore, we recommend that the Commission exercise its prosecutorial
61 discretion to dismiss the allegations that contributions reported under the name Patricia Mulligan
62 violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4. *See Heckler v. Chaney*, 470 U.S. 821 (1985).
63 Finally, the Office of General Counsel recommends that the Commission approve the attached
64 Factual and Legal Analysis and close the file.

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RECOMMENDATIONS

1. Find no reason to believe that Patricia L. Morgan violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4.
2. Dismiss the allegations that contributions made by Patricia L. Morgan and reported under the name Patricia Mulligan violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4.
3. Approve the attached Factual and Legal Analysis.
4. Close the file.

Daniel A. Petalas
Acting General Counsel

BY:




Gregory R. Baker

Deputy General Counsel — Administration

Date

9/2/15



Jeff S. Jordan
Assistant General Counsel
Complaints Examination
& Legal Administration